

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
REQUEST FOR REFUND UNDER 37 CFR 1.26(a)**

ATTN: MAIL STOP 16

APPLICANT: Rainer Graumann CONFIRMATION NO.: 8814
SERIAL NO.: 09/778,497 GROUP ART UNIT: 3644
FILED: February 7, 2001
TITLE: "GARMENT MICROPHONE, AND COMMUNICATION SYSTEM
AND METHOD FOR EMPLOYING SUCH A MICROPHONE FOR
VOICE CONTROL OF DEVICES"

**Mail Stop 16
Refunds Section of Receipts
Division of Office of Finance
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

S I R:

The Deposit Account (#501519) for the undersigned counsel's law firm was charged \$1020.00 on April 25, 2005. The indicated fee code 1253 indicates a Two Month Extension of Time Fee. A copy of the posting sheet showing the charge is attached hereto.

The undersigned counsel received an Office Action Dated December 7, 2004 with a response period of 3 months (copy of Action enclosed). A response to the Office Action was mailed on February 18, 2005, well within the period for response. This response was received at the Patent and Trademark Office on February 22, 2005, as shown by the attached stamped postcard. Because a Response was submitted in a timely manner by the undersigned counsel it is believed that no fee is due for an extension of time.

It is therefore believed that the \$1020.00 charges was made in error, and a refund of this amount is respectfully requested. This refund is requested to be effected by crediting the aforementioned Deposit Account No. 501519 in the amount of \$1020.00. A duplicate copy of this sheet is attached.

If there is some other reason for the charge of \$1020.00, we would appreciate being advised of the specifics.

Submitted by,

Steven H. Noll

(Reg. 28,982)

Steven H. Noll

SCHIFF HARDIN LLP - Patent Department
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Chicago, Illinois 60606

CUSTOMER NO. 26574

Telephone: 312/258-5781

Attorneys for Applicants.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on July 27, 2005.

Steven H. Noll

Steven H. Noll

CH2\1261810.1

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**United States
Patent and
Trademark Office**



Deposit Account Statement

Requested Statement Month: April 2005
 Deposit Account Number: 501519
 Name: SCHIFF HARDIN & WAITE
 Attention: SUE COLLINS--PATENT DEPT.
 Address: SUITE 6600 SEARS TOWER
 City: CHICAGO
 State: IL
 Zip: 60606-6473
 Country: UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
04/06	2	60558031	P040137(26965-3168)	8007	\$20.00	\$18,875.25
04/06	43	10078852	PO2,0046	1501	\$120.00	\$18,755.25
04/06	47	10659859	P03,0331	8021	\$40.00	\$18,715.25
04/06	48	10856228	P04,0225	8021	\$40.00	\$18,675.25
04/06	49	10833920	P04,0131	8021	\$40.00	\$18,635.25
04/06	50	10834694	P04,0156	8021	\$40.00	\$18,595.25
04/07	2	10510854	P04,0413	1613	-\$20.00	\$18,615.25
04/07	4	10510854	P04,0413	1611	\$180.00	\$18,435.25
04/08	1	10102380	P02,0100	1251	\$120.00	\$18,315.25
04/12	23	11079732	P03,0418-01	1202	\$900.00	\$17,415.25
04/12	178	10505237	P04,0298	8021	\$40.00	\$17,375.25
04/12	443	10415027	P03,0163	8021	\$40.00	\$17,335.25
04/13	1	10843534	P02,0190 02	1814	\$130.00	\$17,205.25
04/13	8	09530549	P00,0665	1801	\$790.00	\$16,415.25
04/18	1	10464983	P02,0371	1806	\$180.00	\$16,235.25
04/18	1	10506957	P04,0293	1614	\$86.00	\$16,149.25
04/18	2	10464983	P02,0371	1806	\$180.00	\$15,969.25
04/21	8	10833992	P99,0501-01	1806	\$180.00	\$15,789.25
04/25	1	09778497	P00,1994	1253	\$1,020.00	\$14,769.25
04/25	208	10848950	P04,0217(31233-0000)	8007	\$20.00	\$14,749.25
04/25	246	10042966	P04,0486(31395-0012)	8007	\$20.00	\$14,729.25
04/26	1	10431109	P02,0598	1202	\$100.00	\$14,629.25
04/27	44	10685227	P03,0418	1464	\$130.00	\$14,499.25
04/29	62	11026746		9204	-\$65.00	\$14,564.25

START SUM OF
 BALANCE CHARGES
 \$18,895.25 \$4,416.00

SUM OF END
 REPLENISH BALANCE
 \$85.00 \$14,564.25

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,497	02/07/2001	Rainer Graumann	P00,1994	8814
26574	7590	12/07/2004		
SCHIFF HARDIN, LLP PATENT DEPARTMENT 6600 SEARS TOWER CHICAGO, IL 60606-6473			EXAMINER MICHALSKI, JUSTIN I	
			ART UNIT 2644	PAPER NUMBER

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
DEC 13 2004
SCHIFF HARDIN LLP
U.S. PATENT DEPT.

Office Action Summary

Application No.

09/778,497

Applicant(s)

GRAUMANN, RAINER

Examiner

Justin Michalski

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I) Claims drawn to Figure 1 comprising a microphone integrated into a surgical mask, classified in class 128, subclass 201.19. Species II) Claims drawn to Figure 2 comprising a larynx microphone integrated into a neckband classified in class 381, subclass 364. All independent claims 1, 8, and 13 contain both species I and II.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Application/Control Number: 09/778,497
Art Unit: 2644

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin Michalski whose telephone number is (703)305-5598. The examiner can normally be reached on 8 Hours, 5 day/week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Isen can be reached on (703)305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JIM


XU MEI
PRIMARY EXAMINER

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MAIL STOP AMENDMENT

ON. COMMISSIONER OF PATENTS
P.O. BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450

SIR:

PLEASE APPLY A RECEIPT STAMP HERETO AND MAIL TO
ACKNOWLEDGE RECEIPT OF THE ATTACHED:

Rainer Graumann

Response to the December 7, 2004
Office Action

APPLICANT

TYPE OF DOCUMENT(S)

February 18, 2005

USSN 09/778,497 P00,1994

MAILING DATE

REFERENCE NUMBER

March 7, 2005
26965-0753 SHN

SCHIFF HARDIN & WAITE



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RESPONSE TO THE DECEMBER 7, 2004 OFFICE ACTION

APPLICANT: Rainer Graumann GROUP ART UNIT: 2644
SERIAL NO.: 09/778,497 EXAMINER: Justin I. Michalski
FILED: February 7, 2001 CONFIRMATION NO.: 8814
TITLE: "GARMENT-WORN MICROPHONE, AND COMMUNICATION
SYSTEM AND METHOD EMPLOYING SUCH A MICROPHONE
FOR VOICE CONTROL OF DEVICES"

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

S I R:

In the Office Action dated December 7, 2004, an election of species requirement was imposed, between the species of Figure 1 comprising a microphone integrated into a surgical mask, and the species of Figure 2, comprising a larynx microphone integrated into a neck band. Under 35 U.S.C. §121, the Examiner required election of a single disclosed species for prosecution on the merits, to which the claims shall be restricted if no generic claim is held to be allowable.

Applicant notes that the Examiner stated that claims 1-20 were pending in the application, and therefore claims 1-20 were subject to the election of species requirement. Claim 14, however, was cancelled in Amendment "A" filed July 29, 2004, and therefore only claims 1-13 and 15-20 are pending in the application and are the subject of the election of species requirement.

Applicant respectfully traverses the election of species requirement for the following reasons.

04/25/2005 BDAVENPO 00000001 09778497
01 FC:1253 1020.00 DA

Adjustment Date: 09/20/2005 SDIRETAL 09778497
04/25/2005 BDAVENPO 00000001 501519
01 FC:1253 1020.00 CR